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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,156	10/25/2001	Samuel L. Forusz	70452P001C	3099

8791 7590 07/29/2003

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[REDACTED] EXAMINER

CHOI, FRANK I

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1616

DATE MAILED: 07/29/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/057,156	FORUSZ ET AL.	
	Examiner Frank I Choi	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 6/3/2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-11 and 14-23 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 1-11 is/are allowed.

6) Claim(s) 14-23 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____

4) Interview Summary (PTO-413) Paper No(s). 10
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

Allowable Subject Matter

Claims 1-11 appear to be allowable.

Response to Amendment

Examiner notes that the Revised Amendment Rules no longer requires and Applicant should not submit a clean copy and separate marked up copy of the amendment. Applicant need only submit single copy which contains amendments to the Specification, if any, in marked-up form for changes to original or previously amended parts of the Specification or clean form for adding entirely new parts, an entire listing of all claims indicating their status, i.e, original, previously amended, cancelled, not entered, currently amended, in which cancelled claims and not entered claims need only have the status modifier next to the claim number, the original and previously amended claims not marked-up and the currently amended claims being marked-up.

See USPTO internet site> Patents>Resources>Revised Amendment Practice for examples of proper amendment practice.

Terminal Disclaimer

The terminal disclaimer filed on 3/31/2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Pat. 6,436,446 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Specification

The disclosure is objected to because of the following informalities: Paragraph [0032] – the calculation of calcium appears to be in error as the calculated percent is not 0.21 percent but actually 0.021 percent whereas the percent calculation of the total amounts of citric and malic

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acid in 240 ml is 0.21 percent. Further, Examiner suggests that Applicant insert "grams" or "g" and "milliliters" or "ml" where appropriate in the said paragraph. Also, for purposes of clarifying the record, Examiner respectfully requests that Applicant set forth in the subsequent response to this Office Action how the amount of calcium was calculated.

Claim 16 objected to because of the following informalities: "solubilized beverage" should be "solubilized beverage".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-23 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claims 14-23 fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in Paper No. 12 filed 6/3/2003. In that paper, applicant has stated the pH is 3-5, and this statement indicates that the invention is different from what is defined in the claim(s) because the claims set forth a pH of less than 5.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14-16,20,22 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Liska et al. (US Pat. 6,051,260).

Liska et al. expressly discloses teaches a composition which is mixed in water containing inulin, fructooligosaccharides, a source of pantothenic acid in the form of calcium pantothenate, ascorbic acid, vitamin E, calcium citrate, magnesium citrate, potassium phosphate, Vitamin D3 and Vitamin K (Columns 10,11, Claims 7, 15) falling within the scope of applicant's claims.

Alternatively, at the very least the claimed invention is rendered obvious within the meaning of 35 USC 103, because the prior art discloses products and uses that contain the same exact ingredients/components as that of the claimed invention. See In re Fitzgerald, 205 USPQ 594 (CCPA 1980). See also In re May, 197 USPQ 601, 607 (CCPA 1978); Ex parte Novitski, 26 USPQ2d 1389, 1390-91 (Bd Pat. App. & Inter. 1993).

Examiner had duly considered Applicant's arguments but deems them unpersuasive.

The prior art is not required to define a compound as being an acidifier. If the compound is an organic acid it will meet the claim. Therefore, since pantothenic acid, folic acid and ascorbic acid are organic acids and will modify the pH of the composition, they meet the limitations of the claim. Applicant argues that Liska fails to describe a pH range of 3 to pH 5, however, Applicant's claims do not claim a pH of 3-5.

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Conclusion

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or (703) 305-3592.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (703) 308-0067. Examiner maintains a flexible schedule. However, Examiner may generally be reached Monday-Friday, 8:00 am – 5:30 pm (EST), except the first Friday of the each biweek which is Examiner's normally scheduled day off.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. Thurman Page, can be reached on (703) 308-2927. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (703) 308-1235 and (703) 308-0198, respectively.

FIC

July 27, 2003



JOHN PAK
PRIMARY EXAMINER
GROUP 1600